

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC BERRY,

Petitioner,

Civil No. 2:08-CV-12987

v.

HONORABLE NANCY G. EDMUNDS
UNITED STATES DISTRICT JUDGE

MARY BERGHUIS,

Respondent,

**OPINION AND ORDER VACATING THE OPINION AND ORDER OF
SUMMARY DISMISSAL AND TRANSFERRING THE PETITION FOR WRIT OF
HABEAS CORPUS TO THE WESTERN DISTRICT OF MICHIGAN**

Marc Berry, (“Petitioner”), presently confined in the West Shoreline Correctional Facility in Muskegon Heights, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 29, 2008, Magistrate Judge R. Steven Whalen signed an “Order to Correct Deficiency,” in which petitioner was ordered to submit a \$ 5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within twenty one days of the order. On September 5, 2008, this Court summarily dismissed the petition for writ of habeas corpus without prejudice, on the ground that petitioner had failed to comply with the deficiency order.

Petitioner has now filed a request for this Court to rescind the opinion and order of summary dismissal and to transfer the matter to the United States District Court for the Western District of Michigan. For the reasons stated below, the

opinion and order of summary dismissal is vacated and the Clerk of the Court is ordered to transfer the case to the United States District Court for the Western District of Michigan.

In his request to rescind the summary dismissal order, petitioner indicates that had previously file a petition for writ of habeas corpus with the Western District of Michigan, which had been dismissed without prejudice on the ground that petitioner had failed to exhaust his state court remedies. Petitioner claims that after exhausting his state court remedies, he had intended to re-file his habeas petition in the Western District of Michigan, where his previous habeas petition had been filed, but petitioner had misplaced his filings from his previous case when he was transferred to another prison. Petitioner has now obtained the case number for that case, *Berry v. Berghuis*, U.S.D.C. No. 5:06-CV-65 (W.D. Mich. May 23, 2006), and wishes to have the matter transferred to that court, where he will presumably ask the Western District of Michigan to reopen his previously filed habeas petition.

A district court has the discretion, pursuant to 28 U.S.C. § 1631, to transfer a case improperly filed in the district, in the interests of justice. *Phillips v. Seiter*, 173 F. 3d 609, 610 (7th Cir. 1999). For the convenience of parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought. See *Weatherford v. Gluch*, 708 F. Supp. 818, 819-20 (E.D. Mich. 1988)(Zatkoff, J.); 28 U.S.C. § 1404(a).

When a habeas petitioner files his or her habeas application in the wrong court based on a good faith error about the appropriate forum for his or her claim, it is in the interests of justice to transfer the case to the correct district. See *Castro-Cortez v. I.N.S.*, 239 F.3d 1037, 1047 (9th Cir. 2001). In this case, a transfer of petitioner's habeas application to the Western District of Michigan would be in the interest of justice because it seems likely that petitioner, acting *pro se*, filed his petition in this district through a mistake or misunderstanding. See *U.S. v. Garcia*, No. 2007 WL 4245733, * 1 (E.D. Pa. November 30, 2007).

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED** that the Opinion and Order of Summary Dismissal dated September 5, 2008 is **VACATED**.

IT IS FURTHER ORDERED that the Clerk of the Court transfer this case to the United States District Court for the Western District of Michigan pursuant to 28 U.S.C. § 1631.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: September 25, 2008

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 25, 2008, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager